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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,352	04/08/2004	Markus Hartmann	DT-6785	8129
30377	7590	03/08/2007	EXAMINER	
DAVID TOREN, ESQ. ABELMAN FRAYNE & SCHWAB 666 THIRD AVENUE NEW YORK, NY 10017-5621			LANDRUM, EDWARD F	
			ART UNIT	PAPER NUMBER
			3724	
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE		DELIVERY MODE	
3 MONTHS	03/08/2007		PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/820,352	HARTMANN, MARKUS
	Examiner Edward F. Landrum	Art Unit 3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 1/11/2007.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,2 and 4-6 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,2 and 4-6 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 1 is objected to because of the following informalities: The support region should be labeled 35, as 36 is the spring member. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1, 2, and 4-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not understood how the housing can have the same release direction as the support regions of the adjusting device as the housing appears to be comprises of multiple parts assembled in multiple directions from multiple locations.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 2, and 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gerritsen (U.S Patent No. 5,421,091) in view of Morehouse (U.S Patent No. 1,753,441) and in further view of Young (U.S Patent No. 998318).

Gerritsen teaches (see Figure 1) a motor driven reciprocating saw comprising a housing (12), guide means (25) with a connection element (28) that is releasably connectable to the housing (12). The housing (12) has a connection means (20 and 45) the plunger (45) being adjustable. The plunger has a spring (52) attached to it for biasing the adjusting device (45) to a locking position. Both grooved support arms on the connection element (28) of the guide means (25) are released in the same direction (see Figure 1). The plunger (45) moves away from the housing side (20a) when releasing the guide means (25) from the housing. Moreover, the plunger (45) has two separate parts; an actuation element (54) is located on one side and an adjusting element (46) on the other. Lastly, all of the moving parts of the adjusting device (20, 54, and 46) and the housing (12 as shown by crevice 20b)) have a common release direction and are capable of being formed by a die casting process.

Gerritsen teaches all of the elements of the current invention as stated above except the spring member being a rectilinear springy bar substantially parallel to the housing neck and secured to the housing by a screw.

Morehouse teaches (see Figure 1) a springy bar (29) that is substantially parallel to the housing used to bias a locking element (28) into adjustment notches (27) found on the shaft of a tool extending from the housing. The spring bar (29) is attached to the housing with a single screw (see Figure 1).

Young teaches (see Figures 1 and 2) the use of a rectilinear springy bar to lock the joint of separate shafts.

It would have been obvious to have modified Gerritsen to incorporate the teachings of Morehouse to make the spring a springy bar substantially parallel to the housing since the examiner takes Official Notice of the equivalence of a coil spring and a springy bar for their use in the chucks and socket art and the selection of either of these known springs to form the bias of Gerritsen would be within the level of ordinary skill in the art.

Morehouse and Young show that the shape a springy bar takes is dependent on the surface the springy bar is mated and not to an inventive step as both springy bars still have equivalent functions. Furthermore, it has been held that changing the size or shape of an object without providing an argument that the particular design is significant or is anything more than one of numerous configurations a person of ordinary skill in the art would find obvious does not constitute a patentable advance. Therefore it would have been an obvious matter of design choice to modify the modified device of Gerritsen and make the springy bar rectilinear, since applicant has not disclosed that having the springy bar be rectilinear solves any stated problem or is for any particular purpose and it appears that the springy bar would perform equally well being of any shape conformed to the shape of the handle it was located.

6. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified device of Gerritsen in view of Osada et al (U.S Patent No. 6,523,267), hereinafter Osada, in further view of Smolinski et al (U.S Patent No. 5,992,540), hereinafter Smolinski.

The modified device of Gerritsen teaches all of the elements of the current invention as stated above except the saw comprising a hand-protecting member securable to the housing and covering the actuating element.

Osada teaches (see Figure 5) providing a cover (24c and h) securable to the neck of a reciprocating saw for the purpose of keeping heat away from a user's hands while also making the saw easier to handle by increasing the coefficient of friction between the saw and the user's hands (Col. 4, lines 47-58).

Smolinski teaches (see Figure 6) providing a cover for a hand tool further comprising a cover (57) made of flexible material for a button found on the device (Col. 4, lines 23-37).

It would have been obvious to have modified the modified device of Gerritsen to incorporate the teachings of Osada and Smolinski to provide a cover that enabled a user to grip the saw better and reduce any heat associated with using the saw while also providing a cover to not allow any material from entering the saw around the adjustment element that could potentially cause the adjustment element to break.

7. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over the modified device of Gerritsen in view of Stowell et al (U.S Patent No. RE37,190), hereinafter Stowell.

The modified device of Gerritsen teaches all of the elements of the current invention as stated above except for the flexible region of the cover above the button having a rippled surface.

Stowell teaches (Col. 3, lines 66-67; Col. 4, lines 1-4; also see Figures 1, 2, and 7) the use of elastomeric fins to enhance a user's grip at a meant to be depressed by the user.

It would have been obvious to have modified the modified device of Gerritsen to incorporate the teachings of Stowell to provide a rippled surface to enhance a user's grip at a button depressing location so the user would have an easier time depressing the button.

#### ***Response to Arguments***

8. Applicant's arguments with respect to claims 1, 2, and 4-9 have been considered but are moot in view of the new ground(s) of rejection.

Morehouse does belong in the same field as the applicant's endeavor as both teach quick release locking mechanisms for tools.

The fact that there is a reference used to teach a springy bar used to lock an adjustable tool is evident that it is old and well known. Furthermore, Jackson et al (U.S Patent No. 5,931,065) teaches the same general device as Morehouse but uses a coil spring instead of a springy bar.

#### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Roe (U.S Patent No. 6,272,757) teaches the use of a spring biased adjustment device on a reciprocating saw. Livermont (U.S Patent No. 2,371,901) teaches the use of a rectilinear spring bar. Reed (U.S Patent No. 1,984,430), and Nowak et al (U.S

Patent No. 6,574,015) teach covers for hand tools. Roscoe (U.S Patent No. 986, 761), Geiger (U.S Patent No. 1,076,971), Young (U.S Patent No. 998,318), Richards (U.S Patent No. 83,410), Ruegg (U.S Patent No. 868,812), and Tseng (U.S Patent No. 5,664,792) teach springy bars used on replaceable tool carriers.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward F. Landrum whose telephone number is 571-272-5567. The examiner can normally be reached on Monday-Friday 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 571-272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EFL   
3/1/2007

  
BOYER D. ASHLEY  
SUPERVISORY PATENT EXAMINER